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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 BUSINESS PARTNER SOLUTIONS,
11 INC.,

12 Plaintiff,

13 v.

14 NOVACOAST, INC.; and DOES 1
15 through 20, inclusive,

16 Defendants.

Case No. 2:23-cv-02961-DSF-MAA

**STIPULATED PROTECTIVE
ORDER**

Magistrate Judge: Hon. Maria A. Audero
Judge: Hon. Dale S. Fischer
Dept.: 7D

Complaint Filed: April 19, 2023
Trial Date: None set yet

1 **A. PURPOSE AND LIMITATIONS**

2 Discovery in this Action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The Parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery, and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 **B. GOOD CAUSE STATEMENT**

12 This Action is likely to involve trade secrets, customer and pricing lists and
13 other valuable research, development, commercial, financial, technical and/or
14 proprietary information for which special protection from public disclosure and
15 from use for any purpose other than prosecution of this Action is warranted. Such
16 confidential and proprietary materials and information consist of, among other
17 things, confidential business or financial information, information regarding
18 confidential business practices, or other confidential research, development, or
19 commercial information (including information implicating privacy rights of third
20 parties), information otherwise generally unavailable to the public, or which may be
21 privileged or otherwise protected from disclosure under state or federal statutes,
22 court rules, case decisions, or common law. Accordingly, to expedite the flow of
23 information, to facilitate the prompt resolution of disputes over confidentiality of
24 discovery materials, to adequately protect information the Parties are entitled to
25 keep confidential, to ensure that the Parties are permitted reasonable necessary uses
26 of such material in preparation for and in the conduct of trial, to address their
27 handling at the end of the litigation, and serve the ends of justice, a protective order
28 for such information is justified in this matter. It is the intent of the Parties that

1 information will not be designated as confidential for tactical reasons and that
2 nothing be so designated without a good faith belief that it has been maintained in a
3 confidential, non-public manner, and there is a good cause why it should not be part
4 of the public record of this case.

5 **C. PROCEDURE FOR FILING UNDER SEAL**

6 The Parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file Confidential Information
8 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
9 and the standards that will be applied when a party seeks permission from the court
10 to file material under seal.

11 Accordingly, the Parties stipulate and agree that when information has been
12 designated Confidential pursuant to this Stipulated Protective Order, the Parties
13 shall follow the procedures set forth in Civil Local Rule 79-5.2.2, subsection (b).
14 Any document that is not confidential, privileged, or otherwise protectable in its
15 entirety will not be filed under seal if the confidential portions can be redacted. If
16 Protected Material can be redacted, then a redacted version for public viewing,
17 omitting only the confidential, privileged, or otherwise protectable portions of the
18 document, shall be filed. Any application that seeks to file Protected Material under
19 seal in its entirety should include an explanation of why redaction is not feasible.

20 **2. DEFINITIONS**

21 2.1 Action: The above entitled proceeding, bearing Case No. 2:23-cv-
22 02961-DSF-MAA.

23 2.2 Challenging Party: A Party or Non-Party that challenges the
24 designation of information or items under this Order.

25 2.3 Confidential Information or Items: Information (regardless of how it is
26 generated, stored or maintained) or tangible things that qualify for protection under
27 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
28 Statement.

1 2.4 Court: The Honorable Dale S. Fischer, the Honorable Maria A. Audero,
2 or any other judge to which this Action may be assigned, including Court staff
3 participating in such proceedings.

4 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
5 their support staff).

6 2.6 Designating Party: A Party or Non-Party that designates information or
7 items that it produces or discloses in responses to discovery as “Confidential.”

8 2.7 Disclosure or Discovery Material: All items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.8 Expert: A person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.9 House Counsel: Attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10 Non-Party: Any natural person, partnership, corporation, association, or
19 other legal entity not names as a Party to this Action.

20 2.11 Outside Counsel of Record: Attorneys who are not employees of a
21 Party to this Action but are retained to represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law firm
23 which has appeared on behalf of that party, and includes support staff.

24 2.12 Party or Parties: Any party to this Action, including all of its officers,
25 directors, employees, consultants, retained experts, and Outside Counsel of Record
26 (and their support staffs).

27 2.13 Producing Party: A Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.14 Professional Vendors: Persons or entities that a Party has retained or
2 consulted with in order to provide litigation support services (e.g., photocopying,
3 videotaping, translating, preparing exhibits or demonstrations, and organizing,
4 storing, or retrieving data in any form or medium) and their employees and
5 subcontractors, whether or not retained to testify at any oral hearing.

6 2.15 Protected Material: Any Disclosure or Discovery Material that is
7 designated as “Confidential.”

8 2.16 Receiving Party: A Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only
12 Protected Material (as defined above), but also (1) any information copied or
13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
14 compilations of Protected Material; and (3) any testimony, conversations, or
15 presentations by Parties or their Counsel that might reveal Protected Material.

16 The Parties stipulate and agree to follow the procedures set forth in Civil
17 Local Rule 79-5.2.2, subsection (b) before filing any Protected Material and that any
18 document that is not confidential, privileged, or otherwise protectable in its entirety
19 will not be filed under seal if the confidential portions can be redacted. Any use of
20 Protected Material at trial shall be governed by the orders of the trial judge.

21 4. DURATION

22 The confidentiality obligations imposed by this Stipulation and Order will
23 remain in effect throughout all proceedings—including pretrial proceedings and
24 after final disposition of this litigation—unless and until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. The Parties acknowledge,
26 however, that where a case proceeds to trial, information designated Confidential
27 pursuant to this Stipulation and Order may become public unless the Designating
28 Party demonstrates to the trial judge in advance of the trial the existence of

1 compelling reasons supported by specific factual findings to proceed otherwise. *See*
2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
3 (distinguishing “good cause” showing for sealing documents produced in discovery
4 from “compelling reasons” standard when merits-related documents are part of court
5 record)).

6 Accordingly, the Parties shall meet and confer regarding the procedures for
7 use of any Protected Materials at trial—including in pretrial proceedings—and shall
8 move the Court for entry of an appropriate order no later than the Final Pretrial
9 Conference. Nothing in this Stipulation and Order shall affect the admissibility into
10 evidence of Protected Material, or abridge the rights of any person to seek judicial
11 review or to pursue other appropriate judicial action with respect to any ruling made
12 by the Court concerning the issue of the status of any Protected Material.

13 Even after final disposition of this litigation, the confidentiality obligations
14 imposed by this Order shall remain in effect until a Designating Party agrees
15 otherwise in writing or a court order otherwise directs. Final disposition shall be
16 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
17 or without prejudice and (2) final judgment herein after the completion and
18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
19 including the time limits for filing any motions or applications for extension of time
20 pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

23 Each Party or Non-Party that designates information or items for protection
24 under this Order must take care to limit any such designation to specific material
25 that qualifies under the appropriate standards. The Designating Party must designate
26 for protection only those parts of material, documents, items, or oral or written
27 communications that qualify so that other portions of the material, documents, item,
28

1 or communications for which protection is not warranted are not swept unjustifiably
2 within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating
7 Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that
18 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
19 "*Confidential Legend*"), to each page that contains Protected Material. If only a
20 portion or portions of the material on a page qualifies for protection, then the
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins or by some other suitable method).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 provisionally deemed "CONFIDENTIAL." After the inspecting Party has identified
28 the documents it wants copied and produced, the Producing Party must determine

1 which documents, or portions thereof, contain Confidential Information and qualify
2 for protection under this Order. Before producing the specified documents, the
3 Producing Party must affix the Confidential Legend to each page that contains
4 Protected Material. If only a portion or portions of the material on a page qualifies
5 for protection, then the Producing Party also must clearly identify the protected
6 portion(s) (e.g., by making appropriate markings in the margins or by some other
7 suitable method).

8 (b) for testimony given in depositions, a Producing Party or its counsel may
9 designate deposition exhibits or portions of deposition transcripts as Protected
10 Material either by: (a) indicating on the record during the deposition that a question
11 calls for Confidential Information, in which case the reporter will bind the transcript
12 of the designated testimony in a separate volume and mark it as "Confidential
13 Information Governed by Protective Order"; or (b) notifying the reporter and all
14 counsel of record, in writing, within 30 days after a deposition has concluded, of the
15 specific pages and lines of the transcript that contain Confidential Information and
16 are to be designated "CONFIDENTIAL" in which case all counsel receiving the
17 transcript will be responsible for marking the copies of the designated transcript in
18 their possession or under their control as directed by the Producing Party of that
19 person's counsel. The entire deposition transcript shall be provisionally deemed
20 "CONFIDENTIAL" for the 30-day period following the deposition.

21 (c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent place on the
23 exterior of the container or containers in which the information is stored the
24 Confidential Legend. If only a portion or portions of the information warrants
25 protection, then the Producing Party shall identify the protected portion(s) to the
26 extent practicable.

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
28 failure to designate qualified information or items does not, standing alone, waive

the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a confidentiality designation at any time consistent with Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process, which shall comply with Local Rule 37.1 *et seq.*, and with Section 4 of Judge Audero's Procedures ("Mandatory Telephonic Conference for Discovery Disputes").¹

6.3 Joint Stipulation. Any challenge submitted to the Court shall be via joint stipulation pursuant to Local Rule 37-2.

6.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all Parties shall continue to afford the material in question the level of protection to which it is entitled under Section 4 of this Stipulation and Order unless and until the Court orders otherwise.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the

¹ Judge Audero's Procedures are available at <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of Section 13 below.

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Procedure Governing the Filing of Confidential Information. Unless
7 otherwise ordered by the Court, any Party (or signatory to the “Acknowledgment
8 and Agreement to Be Bound” attached as "**Exhibit A**" hereto) seeking to file a
9 document designated “CONFIDENTIAL” or containing Protected Material must
10 follow the following procedures set forth in Civil Local Rule 79-5.2.2, subsection (b).

11 7.3 Disclosure of Confidential Information or Items. Unless otherwise
12 ordered by the Court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to
16 disclose the information for this Action; (b) the officers, directors, and employees
17 (including House Counsel) of the Receiving Party to whom disclosure is reasonably
18 necessary for this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound”;

22 (d) the Court and its personnel subject to the procedures set forth in Section
23 7.2 above;

24 (e) Court reporters and their staff;

25 (f) outside professionals consulted by the Parties, including jury or trial
26 consultants, mock jurors, and Professional Vendors to whom disclosure is
27 reasonably necessary for this Action and who have signed the “Acknowledgment
28 and Agreement to Be Bound”;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information and who have signed the “Acknowledgment and Agreement to Be Bound”;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” and (2) unless otherwise agreed by the Designating Party or ordered by the Court, they will not be permitted to keep any Confidential Information unless they sign the “Acknowledgment and Agreement to Be Bound.” Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order in the other litigation,
2 then the Party served with the subpoena or court order shall not produce any
3 information designated in this Action as “CONFIDENTIAL” before a determination
4 by the court from which the subpoena or order issued, unless the Party has obtained
5 the Designating Party’s permission. The Designating Party shall bear the burden and
6 expense of seeking protection of its confidential material, and nothing in these
7 provisions should be construed as authorizing or encouraging a Receiving Party in
8 this Action to disobey a lawful directive from another court.

9 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
10 **PRODUCED IN THIS LITIGATION**

11 (a) The terms of this Order are applicable to information produced by a Non-
12 Party in this Action and designated as “CONFIDENTIAL.” Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s Confidential Information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 Confidential Information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party
21 that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this Action, the relevant discovery request(s), and a reasonably
25 specific description of the information requested; and

26 (3) make the information requested available for inspection by the
27 Non-Party, if requested.
28

(c) If the Non-Party fails to seek a protective order from this court within days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's Confidential Information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, then the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosure(s); (b) use its best efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the person(s) to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person(s) to execute the "Acknowledgment and Agreement to Be Bound."

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

This provision is not intended to modify whatever procedure may be established in a separate order that provides for production without prior privilege review (e.g., an e-discovery order). Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work

1 product protection, the Parties may incorporate their agreement in a stipulated
2 protective order submitted to the court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it would otherwise have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 **13. FINAL DISPOSITION**

12 Following the final disposition of this Action, as defined in Section 4, within
13 60 days of a written request by the Designating Party, each Receiving Party must
14 return All Protected Material to the Producing Party or destroy such material. As
15 used in this Section, “All Protected Material” includes all copies, abstracts,
16 compilations, summaries, and any other format reproducing or capturing any of the
17 Protected Material. Whether the Protected Material is returned or destroyed, the
18 Receiving Party must submit a written certification to the Producing Party (and, if
19 not the same person or entity, to the Designating Party) by the 60-day deadline that
20 (1) identifies (by category, where appropriate) all the Protected Material that was
21 returned or destroyed and (2) affirms that the Receiving Party has not retained any
22 copies, abstracts, compilations, summaries or any other format reproducing or
23 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
24 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
25 and hearing transcripts, legal memoranda, correspondence, deposition and trial
26 exhibits, expert reports, attorney work product, and consultant and expert work
27 product, even if such materials contain Protected Material. Any such archival copies
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1 that contain or constitute Protected Material remain subject to this Protective Order
2 as set forth in Section 4.

3 14. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and or/monetary
5 sanctions.

6
7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8
9 **SCHWARTZ SEMERDJIAN**
10 **CAULEY & EVANS LLP**

11
12 Dated: December 14, 2023

By: /s/ John A. Schena
John A. Schena
Mikayla M. Kuhn
Attorneys for Plaintiff Business Partner
Solutions, Inc.

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17 **REICKER, PFAU, PYLE & MCROY, LLP**

18
19 Dated: December 14, 2023 _____

By: /s/ Megan K. Woodsome
Meghan K. Woodsome
Attorneys for Defendant Novacoast, Inc.

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22
23 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

24
25 January 11, 2024
26 Dated: _____



Maria A. Audero
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by
 the United States District Court for the Central District of California on [DATE] in
 the case of *Business Partner Solutions, Inc. v. Novacoast, Inc., et al*, Case No. 2:23-
 cv-02961-DSF-MAA. I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order, and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or type
 full name] of _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action
 or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Signature: _____

Printed Name: _____